

Amendments to the Drawings

The attached sheets of drawing includes changes to Figures 1 and 2. These sheets which include Figures 1 and 2, replace the original sheets including Figures 1 and 2.

Attachment: Replacement Sheets

REMARKS/ARGUMENTS

This amendment is filed in response to the office action dated March 20, 2009. Claims 1 and 3-14 are pending in this application. Claims 1 and 3-14 are rejected. The drawings are objected to by the Office Action. Claim 1 has been amended. Support for the amendments can be found throughout the specification. Claim 4 has been cancelled. No new matter has been presented.

Drawing Objections:

On page 2 of the Office Action the drawings stand objected to for allegedly failing to show "every feature of the invention specified in the claims as well any structural detail that is essential for a proper understanding of the proposed invention." In response, applicants have amended the drawings to show the features recited by the Office Action. Specifically,

- (1) the measurement device is shown in Figure 1 as a black box 51. Measurement devices for measuring assays are well known in the art and no further description is necessary;
- (2) the incubator is shown in Figure 1 as black box 52. Again incubators for incubating samples that are to be analyzed are well known in the art and no further description is necessary;
- (3) the test element holder in is shown in Figure 2 as reference number 23. This is generic to the term "cartridge" used throughout the specification and requires no further explanation;
- (4) the test element recess is shown with new reference numeral 53 in at least Figure 2;
- (5) this feature has been canceled from the claims without prejudice or disclaimer; and

(6) the removable holder comprising an immunoassay test reaction container is shown as a black box 54. Immunoassay test reaction containers are well known in the art and no further description is necessary.

Claim Objections:

Claims 1 and 4 stand objected to because they are allegedly substantial duplicates of one another. In response, applicants have canceled claim 4 without prejudice or disclaimer.

Allowable claims:

Applicants note with appreciation that claims 7-9, 12 and 14 have been indicated as containing allowable subject matter.

Claim Rejections – 35 USC §112, second paragraph:

Claims 1 and 3-14 stand rejected under 35 U.S.C. 112, second paragraph, as being unclear for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In view of the foregoing amendments reconsideration and withdrawal of the rejection are respectfully requested.

The Office Action asserts claim 1 is not commensurate in scope with the specification, because the specification “only describes the transport system which includes two concentric rotors mounted on a stationary center of rotation, which is a significantly narrower scope than that of the claim.” Applicants point out that it is well settled that breadth of a claim is not indefiniteness (MPEP 2173.04). Thus, the scope of a claim does not have to be limited to the preferred embodiment described in the specification. Second, the specification does, in fact, describe transport systems that are not limited to rotors. Specifically, at page 9, line 24 and 25, the specification describes a linear transport system.

Next, the Office Action states the "line of travel" lacks antecedent basis. Applicants have amended the claims to introduce "line of travel" in the claims.

The Office Action next claims that it is unclear whether or not the recitation of "further defines that the removable holder is configured to arrange the probe tip dispenser, fluid supply section and test element recess 'on the same line of travel to intersect the liquid dispense or aspirating station (when the removable holder is transported to the station by the transport system)'" means that the station must be located over at least one of the rotors and that the above-cited components must be arranged on the removable holder serially and along a circular line concentric with the rotors. As noted above, the claims are not limited to rotation along circular lines and the claims are not limited to having components arranged above a rotor. Again, there is no requirement that the claims are limited to the preferred embodiment.

Furthermore, the Office Action maintains that it is unclear what structural features of the removable holder containing would allow it "to contain the test element recess such that a test element can be acted upon by the liquid dispense or aspirating station, while the test element is in the recess". Therefore, the Office Action claims that the claim is incomplete for omitting essential elements, such omission amounting to a gap between the elements. One skilled in the art would readily understand what structures could be employed to contain a test element. In fact, the specification provides examples at page 11, lines 17 and 18 of usable registration. The specification makes it clear this is not essential subject matter. See MPEP 2172.01.

In view of the foregoing, reconsideration and withdrawal of the rejection are respectfully requested.

Claim Rejections – 35 USC §102:

Claims 1, 3-6, 10-11 and 13 are rejected under 35 U.S.C. 102(b) as

anticipated by Clark et al. (US 6190617). In view of the foregoing amendments and following remarks, reconsideration and withdrawal of the rejection are respectfully requested.

Applicants have now positively claimed the sample to be analyzed, one or more probe tips, and one or more test elements or test element holders and that these elements are one the same line of travel. Clark fails to teach or render obvious the claimed invention, in particular this aspect of the claimed invention. Instead, Clark clearly teaches as shown in Figure 4A that the sample, i.e., sample cups 26 and reaction vessels 34 are not in the same line of travel. Instead, Clark relies on the translation of the pipette transfer mechanism 6 to access the reaction vessel 34, reagent packs 30 and sample cups 28. See column 20, lines 8 et seq. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Double Patenting Rejection:

Claims 1 and 3-14 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-8 of co-pending Application No 10/436537. This application has been abandoned, accordingly this rejection has been obviated.

Claims 1 and 3-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10, 12 of co-pending Application No. 10/403266. Applicants are filing herewith a terminal disclaimer with respect to the '266 application. This should not be construed as an acquiescence of the propriety of the rejection. Accordingly, applicants respectfully request that the claim rejection be withdrawn.

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Based on the foregoing, applicant believes the application is now in condition for allowance. Favorable reconsideration and notice of allowance are solicited. If any questions arise which can be disposed through interview, the Examiner is encouraged to contact applicants' attorney at the telephone number listed below.

Please charge any fees, which may be required for this submission to Johnson & Johnson Deposit Account No. 10-0750/CDS0290USNPUSNP/TJB.

Respectfully submitted,
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